



Paper No. 16

**BASF CORPORATION
PATENT DEPARTMENT
26701 TELEGRAPH ROAD
SOUTHFIELD, MI 48034-2442**

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JUN 10 2005

OFFICE OF PETITIONS

In re Application of	:	
Swaminathan Ramesh et al	:	CORRECTED DECISION
Application No. 09/747,716	:	UNDER 37 CFR 1.137(b)
Filed: December 22, 2000	:	
Attorney Docket No. IN-5353	:	

This is a corrected decision on the petition under 37 CFR 1.137(b), filed May 3, 2004, to revive the above-identified application. The decision granting the instant petition mailed on July 7, 2004 is vacated.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is **not** a final agency action decision.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional;¹ and (4) any terminal disclaimer (and fee as

¹ 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition

set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

A Notice of Allowance and Issue Fee Due was mailed on March 26, 2002, setting a 3-month, non-extendable statutory period within which to submit the issue fee and publication fee.² On June 11, 2002, in lieu of paying the issue fee and publication fee, applicants filed a Request for Continued Prosecution Application (CPA), which was subsequent to May 29, 2000. The CPA was improper and was automatically treated as a Request for Continued Examination (RCE) under 37 CFR 1.114.³ The RCE was in turn determined to be non-responsive to the prior Office action, since the reply appears to be a *bona fide* attempt to provide a complete reply to the prior Office action. Applicants were given a shortened statutory for reply of one (1) month or thirty (30) days (whichever is later). Consequently, the application became abandoned on August 10, 2002 for failure to timely submit a reply as required by the July 9, 2002 Office action and not for failure to timely pay the issue and publication fees. A Notice of Abandonment was mailed on May 6, 2003.

Accordingly, before revival of this application can be effected, a reply to the Office action of July 9, 2002 must be submitted, along with a renewed petition under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window

varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

² 37 CFR 1.311 (1) § 1.136. The 3-month period ended June 26, 2002.

³ MPEP 706.07(h) (IX) states that "... if an applicant files an RCE with the fee set forth in 37 CFR 1.17(e) and a submission in an application which has been allowed, prosecution will be reopened."

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